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**FACEBOOK'S SUBMISSION TO THE JOINT OIREACTHAS COMMITTEE ON HOUSING, LOCAL  
GOVERNMENT AND HERITAGE ON THE  
GENERAL SCHEME OF THE ELECTORAL REFORM BILL, 2020**

**23 FEBRUARY 2021**

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## ● INTRODUCTION

Facebook welcomes the opportunity to make a submission to the Joint Oireachtas Committee on Housing, Local Government and Heritage as part of its Pre-Legislative Scrutiny of the draft General Scheme of the Electoral Reform Bill, 2020 (the “**General Scheme**”). We welcome the Government’s intention to establish an Electoral Commission and its objective of modernising electoral law in order to better safeguard election integrity.

Facebook believes that online political advertising rules and standards should be harmonised across Europe to the extent possible. Certain obligations in the General Scheme overlap with - and go beyond - the proposed Digital Services Act regulation. Implementing a different set of standards when this regulation is on the horizon would directly contradict the clear aim of the Digital Services Act and the European Democracy Action Plan<sup>1</sup>, which is to create one common standard across the EU and to avoid regulatory fragmentation on content, political advertising and matters pertaining to elections integrity.

Our CEO, Mark Zuckerberg, has called for the introduction of new regulation in numerous areas, particularly with respect to election integrity.<sup>2</sup> In the EU, we have called for changes to strengthen political advertising laws, and we are a signatory to the EU Code of Practice on Disinformation, which has helped to facilitate constructive dialogue and collaboration between government and industry.

A recent example of the work we have been involved in is our signing of the Dutch National Code of Conduct on Online Political Advertising. That agreement is the first of its kind in the European Union and is signed by Dutch Political Parties and Online Platforms.<sup>3</sup>

We realise that the matters of interest to the members of the Committee go far beyond the scope of the Bill, therefore our submission is divided in two parts.

In Part 1, we outline Facebook’s views on protecting democracy, including its efforts -- with respect to election integrity and political advertising -- to increase transparency, prevent interference, and remove harmful content and misinformation. We also discuss the need to prevent fragmentation and to instead establish a common EU regulatory framework to address cross-border political advertising issues. Finally, we discuss the importance of promoting meaningful accountability and respectfully submit that lawmakers should carefully consider how to allocate responsibilities in any updated regulatory framework, with the primary onus on advertisers to provide accurate and complete information.

In Part 2, we outline the concerns we have with the General Scheme’s current provisions for the regulation of online political advertising. Many of these provisions are impractical, and it is difficult to see how a company such as Facebook could comply with them. Given the serious and disproportionate penalties, up to and including imprisonment, that are attached to these provisions, we respectfully submit that the Committee should recommend that further detailed consideration of these provisions by the Government is required.

## ● PART 1: FACEBOOK’S VIEWS ON PROTECTING DEMOCRACY

Facebook is committed to safeguarding election processes, and increasing authenticity, transparency, and accountability with respect to election advertisers, to give everyone a voice on our platforms and to empower people to vote. We have invested heavily to protect the integrity of elections and to combat misinformation on our platforms. Key efforts include:

- Increasing transparency;
- Combatting coordinated inauthentic behaviour and influence operations;
- Removing harmful content, including hate speech, voter fraud and suppression, harassment, and content

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790&from=EN>

<sup>2</sup> See M. Zuckerberg, “Yes, we need regulation, but we can’t do it on our own”, Sunday Independent (30 March 2019), available at: <https://www.independent.ie/business/technology/mark-zuckerberg-yes-we-need-regulation-but-we-cant-do-it-on-our-own-37967115.html> & <https://about.fb.com/news/2019/03/four-ideas-regulate-internet/>; M Zuckerberg, ‘Big Tech needs more regulation’, Financial Times (17 February 2020), available at: <https://www.ft.com/content/602ec7ec-4f18-11ea-95a0-43d18ec715f5> & <https://about.fb.com/news/2019/03/four-ideas-regulate-internet/>

<sup>3</sup> See Press Release, International Institute for Democracy and Electoral Assistance, First national Code of Conduct on online political advertising in the European Union signed by Dutch political parties and global online platforms (Sept. 2, 2021), available at: <https://www.idea.int/news-media/news/first-national-code-conduct-online-political-advertising-european-union-signed-dutch>.

which could contribute to imminent violence and harm;

- Partnering with independent third party fact-checkers to reduce the spread of misinformation;
- Connecting people with accurate and authoritative information about elections; and
- Working with government authorities, law enforcement, security experts, civil society, and tech company peers to stop emerging threats;

Elections have changed and so has Facebook. We're proud of the measures we have taken to help protect elections. However, something as critical as election integrity can't be left to platforms alone. As we work to keep our platforms secure and improve transparency, we recognise that governments, citizens, political actors, and civil society play a more powerful role, and that ultimately effective voter education and awareness raising have a critical impact on integrity. That is why we are investing significant resources to support such engagement, which we describe in further detail below.

## **1.1 PROTECTING ELECTION INTEGRITY AND POLITICAL ADVERTISING**

Protecting election integrity while preserving freedom of expression is a top priority for Facebook. Using lessons from the past and input from experts and policymakers around the world and across the political spectrum, we've made substantial investments in teams and technologies to better secure elections, and we are deploying them where they will have the greatest impact.

We currently have more than 35,000 people around the world working on safety and security issues. They work to review and action content and behaviour that violates our policies. We have 40 teams working on election safety and security issues. Our election protection strategy applies not only during critical times (i.e., in the lead-up to and during elections), but all year-round.

We provide below further information on the core components of our election integrity and political advertising strategy – (i) increasing transparency; (ii) preventing interference; and (iii) removing harmful content and reducing misinformation.

### **1.1.1 INCREASING TRANSPARENCY**

Internet platforms have lowered traditional barriers to political engagement, connected new participants to the political system, and expanded opportunities for the expression of political views. However, the same tools that enable this expanded engagement and access to information have opened new vulnerabilities during electoral cycles. To that end, Facebook and other internet platforms have a responsibility to help defend the integrity of the democratic process.

One of our goals is to ensure that our services contribute to a healthy civic life. We believe regulations that apply clear, industry-wide standards to political advertisers are key to creating a fairer and more transparent environment across online platforms during elections. Regulatory guidance on requirements in this space would ensure a level-playing field, and enable voters to understand who is running campaigns and who is seeing those campaigns.

In the absence of widely agreed upon norms or laws that establish how digital platforms should defend elections, Facebook has taken an industry-leading position on political ad transparency, introducing new tools that go beyond what is currently required of us by law in many countries and go further than any other platform that allows political advertising.<sup>4</sup> This includes:

- Broad definition of political advertising that includes all “ads about social issues, elections, or politics<sup>5</sup>”: This allows us to impose transparency obligations and other requirements on a wide category of ads that could influence political discourse.
- Political advertiser verification: We require any advertiser, who wants to run ads targeting countries in the EU that concern a candidate for public office, a political figure, political parties, elections (including “get out the vote” campaigns) or social issues<sup>6</sup> (“SIEP ads”) to complete an authorisation process<sup>7</sup>. To mitigate the

<sup>4</sup> <https://about.fb.com/news/2020/01/political-ads/>

<sup>5</sup> <https://www.facebook.com/business/help/167836590566506?id=288762101909005>

<sup>6</sup> Civil and social rights, crime, economy, environmental politics, immigration, health, political values and governance, and security and foreign policy.

<sup>7</sup> <https://www.facebook.com/business/help/issuesandpolitics>

risk of foreign interference, we require advertisers to fulfil specific identity confirmation and disclaimer requirements for any country they would like to target. These requirements mean that an organisation that would like to advertise in multiple EU countries would need to have a local representative complete the ad authorisation requirements for each country.

- “Paid for by” disclaimer: We require that all SIEP ads include a “paid for by” disclaimer either on or alongside each advertisement so that anyone who views it can see who paid for the ad. The disclaimer may include more information about the “paid for by” entity, e.g., the organisation’s email address, website, phone number, and physical address.
- Ad Transparency and Ad Library: We maintain an Ad Library<sup>8</sup> which archives SIEP ads for seven years and offers a range of information that shows, e.g., what other ads political campaigns are running, including who paid for them, where they ran, and information on who the ads have reached.<sup>9</sup> We provide important information about SIEP ads, including: (i) the entity responsible for the ad; (ii) the total political ad spend by advertiser; (iii) basic demographic information about who saw the political ad, including age range and gender; and (iv) the range in ad spend and impressions for each political ad, as well as its potential reach. In 2019, we updated our Ad Library to include Potential Reach<sup>10</sup>, which provides the public with information on how big of an audience the advertiser aimed to reach with the ad. We believe providing information about who is running an ad and who actually sees an ad best aligns with effective platform transparency.
- Ad controls: We believe it is important to give people more visibility into and control over the ads they see, which is why we introduced tools like “Why am I seeing this ad?” and Ad Preferences more than six years ago. These tools provide different options for people to control how data can and can’t be used to show ads. In 2020, we also allowed people to choose how an advertiser can reach them via Custom Audience lists. People have always been able to hide all ads from a specific advertiser in their Ad Preferences or directly in an ad, but now they can opt to stop seeing ads based on an advertiser’s Custom Audience list, or make themselves eligible to see ads if an advertiser used a list to exclude them.

For SIEP ads, we recently introduced controls for people to see fewer of these types of ads on Facebook and Instagram. Through the Ad Preferences tool, people are able to turn off all SIEP ads that have the “Paid for by” political disclaimer. We’ve launched this option in the US to start, and we aim to make it available in countries where we have enforcement around SIEP ads.

- Page transparency: On Facebook, we provide information about Pages, such as when they were created, name changes, and the location(s) of the Page administrators.
- News Feed ranking: Users can click on “Why Am I Seeing This” in posts and ads to understand why they are seeing them and control what they see from friends, Pages, and Groups in the News Feed.
- Exemption of qualified news publishers in certain EU markets from our political advertising policies given the integral role of journalism in the democratic process. In doing so, we are acknowledging the crucial difference between news reporting about social issues and campaigning materials from politicians, lobbyists, and advocacy groups.

### 1.1.2 PREVENTING INTERFERENCE

We work with government authorities, law enforcement, security experts, civil society, and other tech companies to stop emerging threats<sup>11</sup>, by establishing direct lines of communication, sharing knowledge, and identifying opportunities for collaboration. In October 2019, we updated our inauthentic behaviour policy<sup>12</sup> to further improve our ability to counter new tactics and act more quickly against the spectrum of deceptive practices we see on our platforms, whether foreign or domestic, state, or non-state.

We have also enhanced our security operations to remove and expose coordinated manipulation campaigns, and detect emerging threats. Our teams of expert investigators actively look for, and remove, coordinated networks<sup>13</sup> of

<sup>8</sup> [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US)

<sup>9</sup> For additional information on our Ad Library and political advertising policy, see: [https://www.facebook.com/business/help/167836590566506?id=288762101909005&helpref=faq\\_content](https://www.facebook.com/business/help/167836590566506?id=288762101909005&helpref=faq_content).

<sup>10</sup> <https://about.fb.com/news/2020/01/political-ads/>

<sup>11</sup> <https://about.fb.com/news/2018/11/investigating-threats/#working-with-partners>

<sup>12</sup> <https://about.fb.com/news/2019/10/inauthentic-behavior-policy-update/>

<sup>13</sup> <https://about.fb.com/news/2018/12/inside-feed-coordinated-inauthentic-behavior/>

inauthentic accounts, Pages, and Groups that seek to manipulate public debate. We have removed tens of thousands of accounts, Pages, and Groups involved in coordinated inauthentic behaviour – notably 17 networks in December 2020 alone<sup>14</sup> – and we block millions of fake accounts every day to prevent the spread of misinformation<sup>15</sup>.

### 1.1.3 REMOVING HARMFUL CONTENT AND REDUCING MISINFORMATION

We apply a three-part strategy – remove, reduce, and inform – to manage problematic content across the Facebook platforms:

- **Remove:** We remove content that violates our Community Standards.<sup>16</sup> These include strict policies on hate speech, voter fraud and suppression, harassment, and content which could contribute to imminent violence and harm. For example, in December 2020, we removed over 400,000 pieces of content on Facebook and Instagram globally, including over 10,000 pieces of content in the EU, for containing Covid-19 misinformation that may lead to imminent physical harm, such as content relating to fake preventative measures or exaggerated cures. We also block ads that violate our Advertising Policies<sup>17</sup>, including ads with debunked claims by third-party fact-checkers and SIEP ads which aren't authorised or don't carry disclaimers<sup>18</sup>.
- **Reduce:** Problematic content that does not meet the standards for removal under our Community Standards but nevertheless undermines the authenticity of the Facebook and Instagram platforms (e.g., clickbait and content debunked by our third-party fact-checkers) is demoted in News Feed. This significantly reduces the number of people on Facebook and Instagram who see that content.
- **Inform:** We work in partnership with more than 80 fact-checking organisations working in more than 60 languages. We continue to expand our fact-checking programme, and now have independent fact-checkers in 21 EU countries. We help to prevent the spread of misinformation and false news by providing additional context on content debunked by these third-party fact-checkers, so that people can make informed decisions about what to click, read, or share. Here are some examples:
  - **Misinformation labels:** Content on our platforms that our fact-checkers have rated false or partly false is prominently labelled<sup>19</sup> so that users can better decide for themselves what to read, trust, and share.<sup>20</sup> During the month of April 2020, we put warning labels on about 50 million pieces of content related to COVID-19 on Facebook, based on around 7,500 articles by our independent fact-checking partners. When people saw those warning labels, 95% of the time they did not go on to view the original content. In December 2020 based on the work of our fact-checking partners, we displayed misinformation warning screens associated with COVID-19 related fact-checks on over 19 million pieces of content globally, including over 2.7 million pieces of content in EU member states.
  - **Additional context about content people share:** In June 2020, we introduced a notification screen that informs users when news articles are more than 90 days old so that they may have the necessary context to make informed decisions on what to share on Facebook<sup>21</sup>.

## 1.2 Preventing fragmented regulation

The 2019 European elections highlighted the cross-border nature of political advertising issues and the need for a common, EU-wide regulatory framework to address these issues. EU electoral laws are determined and enforced at the national level for both European and national elections. We endorse the objective of modernising electoral law in order to better safeguard election integrity. However, rather than attempting to address this issue at a national

<sup>14</sup> <https://about.fb.com/news/2021/01/december-2020-coordinated-inauthentic-behavior-report/>

<sup>15</sup> <https://about.fb.com/news/2019/05/fake-accounts>

<sup>16</sup> <https://www.facebook.com/communitystandards/>

<sup>17</sup> <https://www.facebook.com/policies/ads>

<sup>18</sup> [https://www.facebook.com/policies/ads/prohibited\\_content/misinformation](https://www.facebook.com/policies/ads/prohibited_content/misinformation)

<sup>19</sup> <https://about.fb.com/news/2019/10/update-on-election-integrity-efforts/>

<sup>20</sup> For additional information, see Fact-Checking on Facebook, available at:

<https://www.facebook.com/business/help/2593586717571940?id=673052479947730>.

<sup>21</sup> <https://about.fb.com/news/2020/06/more-context-for-news-articles-and-other-content/>

level, we believe a common regulatory framework across all EU Member States is needed to address the current patchwork of definitions that are applied to political advertising and that creates inconsistency across platforms and countries. Regulation specific to content, online advertising transparency, and matters pertaining to election integrity in Ireland would exacerbate rather than help this problem, particularly where the EU is already considering regulation in this space.

Certain obligations in the General Scheme also overlap with - and go beyond - the proposed Digital Services Act regulation. The Digital Services Act will impose EU-wide standards and obligations for platforms in a variety of spaces, including online advertising transparency. Implementing a different set of standards when this regulation is on the horizon would directly contradict the clear aim of the Digital Services Act and the European Democracy Action Plan<sup>22</sup>, which is to create one common standard across the EU and to avoid regulatory fragmentation on content, political advertising and matters pertaining to elections integrity.

For example, the European Democracy Action Plan refers to a binding proposal on political advertising and campaigning now expected in Q3 2021, aiming at harmonising the definition of what constitutes a political advertisement, addressing transparency requirements and relevant cross border issues relative to online advertising in the EU. We believe that these fundamental questions require a consistent response across the EU before national provisions are considered. In light of the potential duplication and fragmentation, we believe that the proposals in the General Scheme should be revisited.

### **Ensuring meaningful accountability**

As demonstrated above, Facebook is committed to safeguarding election processes, and increasing authenticity, transparency, and accountability with respect to election advertisers to give everyone a voice on our platforms and empower people to vote. We have invested, and continue to invest heavily, to protect the integrity of elections and to combat misinformation on our platforms.

While we are committed to investing and innovating in this area, we do not think that it should be the responsibility of online platforms to set political advertising standards, and we welcome consideration and regulation on what further steps can be taken to ensure fairness and transparency in elections.

In this respect, we believe that it is important to carefully consider how responsibilities should be allocated in any updated regulatory framework. We believe meaningful accountability comes from taking a holistic look at a platform's overall content moderation system. In this respect, the entity or individual running the political campaigns should be primarily held responsible for compliance with applicable laws. While platforms can build systems that provide the accurate disclosure of required information, the primary onus for providing accurate information should be on advertisers, given the scale and volume of online political advertising and platforms' limited ability to verify off-platform and offline information. This approach is also compatible with the limited liability regime for hosting providers under the existing eCommerce Directive 2000/31/EC.

Indeed, while platforms can and do take measures to increase transparency and accountability in political advertising, these measures alone may not be effective unless there is corresponding education and awareness of civil society, individual citizens, political actors, and governments, all of whom are central to furthering transparency and democratic debate.

In recognition of this, across Europe, we collaborate with organisations that are working to strengthen democracy, good governance, and election integrity. We also work with these organisations, which include a wide variety of international and local NGOs that work with European-based research organisations, civil society, and government oversight bodies, to help uncover and combat threats to the integrity of elections and civic debate. This work, which is in addition to our participation in the European Union's Code of Conduct on Misinformation, is tailored across the bloc to support day-of and post-electoral environments based on the needs and challenges facing each country. Here are some examples of our work and partnerships:

- **Supporting rule of law initiatives in transitioning democracies:** Through our partnership with the International Foundation for Electoral Systems ("IFES") and the Stockholm-based International Institute for Democracy and Electoral Assistance ("IDEA"), we've supported and trained civil society, election commissions, and oversight bodies in the Western Balkans on how to use tools like the Ad Library to conduct oversight as well as other products on Instagram and Facebook to reach their constituents.
- **Strengthening civil society ahead of elections:** Through our partnerships with the National Democratic Institute ("NDI"), International Republican Institute ("IRI"), Internews and Freedom House, we have

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<sup>22</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790&from=EN>

designed our partnerships to support their networks with resources, and training on how to best use our platforms for advocacy, outreach, and oversight. We've trained civil society across the EU as well as the Western Balkans and Ukraine.

- **Supporting thought leadership in democracy:** Facebook is a core sponsor and active partner of EU-based think tanks such as the Athens Democracy Forum, Munich Security Conference, and the Copenhagen-based Alliance for Democracy. These organisations promote positive Trans-Atlanticism, democratic systems and open societies. In Ireland, Facebook is a proud member of organisations such as the Institute of International and European Affairs (IIEA) and European Movement Ireland.
- **Media Literacy:** Facebook wants to give people the tools to make informed decisions about the information they see online and where it comes from. To support this effort in Ireland, Facebook runs nationwide media literacy campaigns, such as in the period prior to the 2020 General Election and the campaign to 'Help Stamp out False News' during summer 2020.
- **Digital Citizenship:** At Facebook, we are committed to help build safe, healthy, and supportive digital communities, which in turn may help raise awareness for those involved in the political ecosystem. In order to do this, we need to think about the skills and support that people need to discern fact from fiction, build healthy relationships, stay safe, find greater well-being, build resilience, communicate across diverse cultures, respect other perspectives, think critically about how they contribute to society, and work together to make positive progress – both online and off. Facebook has produced a range of media and digital literacy resources for our users. These have been developed with input and guidance from leading experts e.g., Get Digital<sup>23</sup> and the Digital Literacy Library<sup>24</sup>.
- **Multi-stakeholder collaboration:** Fostering digital citizenship is a whole-of-society responsibility and cannot be achieved by any one stakeholder. It requires a multi-disciplinary strategy involving the full range of stakeholders from government to industry to civil society, educators, and citizens themselves. We believe government can play a role in facilitating more regular dialogue and collaboration among the range of relevant stakeholders by establishing a cooperation framework; this can be built on the work of the European Commission's Media literacy expert group<sup>25</sup>, of which Facebook has participated or Media Literacy Ireland (MLI)<sup>26</sup> of which Facebook is a proud and active member.

## ● PART 2: CONCERNING REFORMS PROPOSED BY THE GENERAL SCHEME

### 2.1 Overview of the General Scheme

As indicated throughout this submission, Facebook firmly believes that online political advertising rules and standards should be harmonised across the EU to the extent possible. As such, and as an overarching observation, Facebook believes that many of the issues addressed in the General Scheme relating to the regulation of online political advertising would be more appropriately addressed at European level in line with the policy and legislative roadmap laid out in the recent European Democracy Action Plan.

Further, to the extent that they are addressed by the Irish State, we would recommend that the General Scheme embrace a principle-based approach, which allows greater flexibility for regulators to engage with companies to promote ongoing innovation and improvements in support of election integrity. Notwithstanding the above, we take the opportunity to make the following observations on the General Scheme, which would introduce a number of significant reforms to Irish electoral law. The most concerning provisions from Facebook's perspective relate to the **Definitions section**, as well as **Part 4** of the General Scheme, the most serious of which include:

- An impractical definition of "political advertisement";
- The provision concerning the "transparency notice";
- A requirement to notify the Election Commission of all transparency notices "as soon as may be" after they have been displayed;
- An obligation to appoint a "responsible person" and to undertake certain due diligence including, among

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<sup>23</sup> <https://www.facebook.com/fbgetdigital>

<sup>24</sup> <https://www.facebook.com/safety/educators>

<sup>25</sup> <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2541>

<sup>26</sup> <https://www.medialiteracyireland.ie/>

other things, to “monitor all dealings” with advertisers and “verify” the “sources” of their funds.

Facebook submits that the above requirements in particular are problematic. Where possible, Facebook suggests that more appropriate alternatives be considered. We address each of the aforementioned issues below, and would welcome the opportunity to further discuss these points.

## 2.2 Proposed new definition of “political advertisement” (Definitions) (Part 4, Head 121)

The General Scheme proposes the following definition for “political advertisement”: “any form of communication in a digital format commissioned for **political purposes** for placement, display or promotion on an online platform during an electoral period and for which a payment is made to the online platform.”

Current Irish election laws define “political purpose” as “any activity conducted **with the purpose of** promoting or opposing, directly or indirectly, the interests, policies, or comments of a Political Actor, or **with the purpose of** influencing the outcome of an election, referendum, or campaign.”

Facebook respectfully submits that this definition is highly problematic because intermediaries like Facebook **cannot detect the purpose or intent of advertisers**; all we can currently do with our technologies and processes is detect the **content** of an ad and assess whether that content is **related to elections, politics, or social issues**.

For this reason, Facebook would suggest that the General Scheme instead define “political advertisement” in line with a more objective definition which could include ads that are:

- 1) Made by, on behalf of, or about a candidate for public office, a political figure, a political party or advocates for the outcome of an election to public office;
- 2) About any election, referendum, or ballot initiative, including "go out and vote" or election campaigns; or
- 3) About social issues or sensitive topics that are heavily debated, may influence the outcome of an election, or relate to existing or proposed legislation such as civil and social rights, crime, economy, environmental politics, health, immigration, political values and governance, and security and foreign policy.

This definition of political advertisements, would allow intermediaries like Facebook to impose transparency obligations and other requirements on a wide category of ads that could influence political discourse, without having to speculate at scale as to the advertisers’ purpose or intent (which, as noted above, simply is not feasible).

## 2.3 Transparency notice (Part 4, Head 121)

Facebook is concerned by requirements relating to the transparency notice, which, as currently drafted, (a) envisages the disclosure of large amounts of personal information and user data which, in turn, triggers GDPR and confidentiality concerns; (b) creates limitations on advertisers by requiring them to determine from the outset the intended purpose and duration of any individual advertisement; (c) goes beyond what would appear to be proportionate to the aim of the requirements, when compared, for example, with the current practices of industry leaders such as Facebook; and (d) exceeds requirements that are applied to offline advertisers, such as those who produce election posters (and who are only required to print the names of the printer and publisher on the poster).

As noted above, because protecting election integrity is a priority for Facebook, we created the Ad Library<sup>27</sup> and Ad Library Report (the “**Report**”) to help users, election regulators, and other stakeholders understand which ads are running during elections, who is responsible for them, how much advertisers and candidates are spending to reach and influence voters, and to analyse additional insights so they can help hold advertisers accountable.

For example, for SIEP ads, one can search in the Ad Library by Facebook Page name or keyword and filter by: (i) country; (ii) Facebook Page Name; (iii) status (i.e., active and/or inactive); (iv) ads that have recently received impressions; (v) disclaimers; and (vi) whether an ad was delivered on Facebook, Instagram or both.

Within the Ad Library, viewers can also learn more about a SIEP ad by clicking “See Ad Details”, for information including: (i) the name of the natural or legal person responsible for the ad; (ii) contact details for the legal person responsible for the ad, including phone number, email, website, and physical address; (iii) spend range on the individual ad; (iv) total spend by that Page (with date ranges); (v) location reached; (vi) number of impressions (range); and (vii) demographic breakdown of who saw the ad by age range and gender.

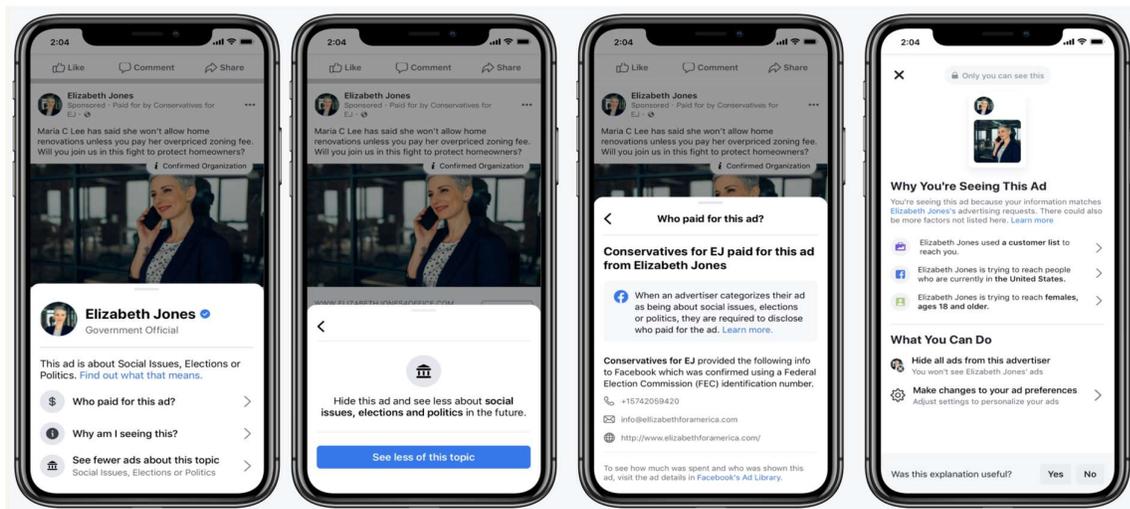
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<sup>27</sup> [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US)

Separately, the Report provides a compiled snapshot of the data for ads about SIEP in the Ad Library. One can browse and filter ad data by the total spending for those ads during specified date ranges. The Report also includes a regional spend breakdown that covers ads that have run in the last 7, 30, or 90 days. It shows the total number of ads and total spend on SIEP ads in the Ad Library by country, as well as total spend by advertiser, advertiser spend by day and top searched keywords from the past week. The Report is also downloadable.

In addition to maintaining the comprehensive Ad Library, and allowing for the generation of detailed Reports, Facebook also includes substantial information on SIEP ads themselves, to ensure that they are transparent. For

example, as demonstrated below, each SIEP ad contains a signal with the “paid for by” information and the “” button to tap for more information, where a link is then provided to the Ad Library. As such, Facebook already satisfies many of the transparency requirements that Head 121 of the General Scheme would seek to introduce.



We remain committed to continuing to problem-solve and innovate in this critical area. That said, we are concerned that the “transparency notice” proposed in Head 121 is not the most efficient nor reliable method to achieve transparency in political advertising. In particular:

- a. **“The name, postal address, email address and, where applicable, the website address of the buyer who paid for the online political advertisement”**

Facebook is concerned that the obligation to provide detailed contact information for natural persons would violate those persons’ privacy and, in the worst cases, potentially subject them to harassment and/or harm. Indeed, it is not inconceivable that, by requiring the publication of individuals’ names, postal addresses, and/or email addresses, real world safety and security concerns would arise for the individuals involved. For example, recent referenda in Ireland have involved emotionally charged topics. Where an individual has paid for online political advertising and his/her home address is published, there is a real and foreseeable risk that a person or group of persons with contrary views could track that person down at home with the possibility of intimidation and physical harm. Such safety concerns should be fully considered and evaluated before prescribing the transparency requirements contemplated by Head 121(2)(a) of the General Scheme in respect of individuals.

Moreover, individuals in Ireland have privacy rights, including the right to privacy in their own home, under the Irish Constitution, the EU Charter of Fundamental Rights as well as the European Convention on Human Rights. Further, the protection afforded by the GDPR to individuals’ personal data such as their name, address, and email should be fully taken into account before requiring the publication of these data points as a precondition to their buying of political advertising.

For these reasons, Facebook permits but does not require natural persons who sponsor and place ads to provide detailed contact information. In the Ads Library, viewers can see the name of the natural or legal person responsible for a particular ad (and we note that this is consistent with what the current draft Digital Services Act requires). Where the ad was paid for by a company, the contact details for the company including phone number, email, website, and address are required and displayed to viewers. For the reasons set out above, the contact information and address is not required of individuals who buy political ads but they can be provided voluntarily. If an individual

chooses to add their contact and address it is displayed in the Ads Library.

Facebook respectfully submits that, to ensure the safety and security of natural persons who advertise, and to encourage free political discourse, the General Scheme likewise should not require natural persons to provide this information.

- b. “Confirmation of whether micro-targeting was applied in the placement, display, and promotion of the online political advertisement and, where applicable, a description of the criteria used,” and “Confirmation of whether the target audience contains a look alike targeting list and, where applicable, a description of the characteristics of the target audience”**

Providing details about the exact criteria selected by advertisers could lead to the actual individuals targeted by ads becoming identifiable to third parties. This is highly problematic in the context of the GDPR, where the threshold for identifiability is quite low (as illustrated by case law of the European Court of Justice and relevant regulatory guidance).

We’re committed to transparency, but it cannot be at the expense of people’s privacy. Publicly sharing targeting categories for ads could expose information about people receiving the ads, such as postal codes or other granular information. Advertisers may have specific targeting strategies they wish to deploy, but who actually sees the ad is what ultimately matters. We believe that information about who the ad reached aligns best with effective platform transparency and we’ve provided this information in the Ad Library for SIEP ads. For example, we share a range of the number of impressions and a demographic breakdown of who saw the ad by age range, gender, and geographic location.

We have heard feedback, particularly from the academic community, that understanding how advertisers choose to target audiences is key to learning more about the impact of digital ads on specific events like elections. In January 2021, we announced an initial pilot tool to enable academic researchers to study the targeting used by SIEP ads that ran in the US prior to Election Day and look forward to learning more through this pilot.

- c. “The total amount paid for the online political advertisement, including the amounts paid for content creation and for online placement, display and promotion”**

As we outlined previously, within the Ad Library, viewers can see information including spend range on the individual ad, and the total spend by that Page (with date ranges). Intermediaries like Facebook cannot and do not have any visibility into the amounts that third party advertisers spend for “content creation,” (e.g., expenses incurred off-platform for the creation of the advertising content).

We also note that, under the Irish Electoral Act 1997, parties and candidates must independently account for their election expenditures, including ad spend. Thus, the financial information designated under Head 121 would be more appropriately and accurately supplied by the appointed national or election agent, who has visibility and oversight over the total costs of ad spend for each party and candidate.

In these circumstances, Facebook respectfully submits that this obligation should be eliminated from the General Scheme.

- d. “The number of days during which the online political advertisement will be placed, displayed, and promoted, and the start and end date of the advertising campaign that the individual is a part of”**

We are concerned that this obligation would unnecessarily burden free enterprise by requiring advertisers to determine, at the outset of an ad campaign, how long that ad campaign will last simply so that platforms can make this information available. An advertiser may wish to extend or shorten the duration of an advertisement at any stage of its campaign for a variety of reasons. In the event that an ad was prematurely ended, this would render the prior information in the transparency notice inaccurate. In the event that an advertiser wished to extend the duration of an ad, in light of this proposed requirement, it would appear that a new ad and corresponding transparency notice would need to be created, which would be both redundant and confusing. This is of particular concern where there may be less restrictive ways for viewers to learn this information.

Instead, it may be more appropriate to require the display of the start date of the online political advertisement (i.e., the first date that an ad ran/received an impression). Where an advertiser has not designated an end date for its ad campaign, viewers can use date filters, like in the Ad Library, to understand whether impressions were shown on a given day.

**e. “The number of user impressions that the online political advertisement is intended to reach and the number of active engagements by a user”**

As a preliminary matter, the reference to “active engagements” is unclear, and as a result it is difficult to fully assess the intention and the potential impact of this provision.

However, a more effective method to provide transparency into understanding the impact of an advertisement, may be to require the number of impressions within a certain range that an advertisement actually had.

Facebook provides this level of transparency in the Ad Library, along with the ranges for Potential Reach, which is the estimated target audience size for each SIEP ad.

## **2.4 Reporting obligations (Part 4, Head 121)**

As noted above, Facebook has several concerns regarding the anticipated content of the transparency notice. Facebook is also concerned about the obligation in Head 121 for online platforms to notify the Electoral Commission as soon as may be after such notices have been displayed, and we would question the value of requiring online platforms to submit separate reports to the Electoral Commission for each and every transparency notice as opposed to promptly including relevant information in the online archive or library envisaged under Head 121.

## **2.5 Appointment of a Responsible Person and Due Diligence Obligations (Part 4, Heads 122-125)**

Facebook is particularly concerned by Heads 122-125 of the General Scheme, which would subject online platforms to potential criminal liability for non-compliance with various due diligence obligations that seem disproportionate and a stark departure from the types of obligations required of other online platforms and sellers.

Head 122 would require online platforms to appoint a person of “authority within either a third party or the accounting unit of a political party” as a “person responsible” for purposes of “identifying and verifying” certain “information and documentation” provided by advertisers to online platforms. To the extent the “person responsible” would be a third party, there are substantial privacy, commercial confidentiality, and platform security concerns with granting them access to advertisers’ information and documentation.

The proposed obligations on the responsible person are further expanded in Heads 123, 124, and 125 of the General Scheme, and also contain onerous due diligence obligations that seem disproportionate and atypical for online platforms and sellers. Further, while an account may be opened by the buyer on the online platform, verification must be required prior to “establishing a business relationship.” This obligation does not acknowledge the possibility that a business / commercial relationship may already exist with a buyer prior to their purchasing of online political advertising arising from service purchased for an unrelated purpose.

Instead of the required appointment of a “responsible person” a more practical framework may be achieved through the appointment of an agreed “point of contact” between the online platform and the Electoral Commission, who would be in a position to act as a bridge of cooperation between the two entities without recourse to the imposition of criminal liability. Facebook would also be willing to work with the Electoral Commission in developing a reporting mechanism whereby persistent refusal or non-compliance with warnings on the part of a buyer would trigger greater enforcement action on an escalated basis against that buyer, as have been successfully developed in the context of online enforcement in other jurisdictions.

As we have outlined above, many of these provisions are impractical, and it is difficult to see how a company such as Facebook could comply with them. Given the serious and disproportionate penalties, up to and including imprisonment, that are attached to these provisions, we respectfully submit that the Committee should recommend that further detailed consideration of these provisions by the Government is required.

We would welcome the opportunity to provide further details in relation to any of the points above, or to discuss any aspect of this submission with the Committee.

Yours sincerely,

A handwritten signature in black ink, reading "Dualta Ó Broin". The signature is written in a cursive style with a large initial 'D' and a distinct 'Ó'.

Dualta Ó Broin  
Head of Public Policy  
Facebook Ireland Limited